

CANADIAN RAILWAY OFFICE OF ARBITRATION  
CASE NO. 1261

Heard at Montreal, Thursday, June 14, 1984  
Concerning

CANADIAN NATIONAL RAILWAY COMPANY  
(CN Rail Division)  
and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of discipline assessed the record of Locomotive Engineer T. R. Landick, London, September 18, 1983.

JOINT STATEMENT OF ISSUE:

On September 18, 1983, Mr. T. R. Landick was employed as locomotive engineer on Train No. 667 from Toronto to London. At approximately 0415 hours, September 19, 1983, a report was received by the Company that the 4 RDC car consist of train 667 had moved, uncontrolled, westward from No. 3 station track onto the north main track of the Strathroy Subdivision.

Following an investigation, the record of Locomotive Engineer T. R. Landick was assessed 10 demerit marks for:

"responsibility in connection with the improper securing of train 667 at London while employed as locomotive engineer, September 18, 1983, resulting in the unattended movement of RDC VIA 6206 -6111-6114-6126 from number 3 depot track to main track Strathroy Subdivision, mileage 0.2 on September 19, 1983.

The Brotherhood appealed the discipline on the grounds that it was not warranted.

The Company declined the claim.

FOR THE BROTHERHOOD:

(SGD.) P. M. MANDZIAK  
General Chairman

FOR THE COMPANY:

(SGD.) M. DELGRECO  
FOR: Assistant  
Vice-President  
Labour Relations.

There appeared on behalf of the Company:

D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
J. B. Bart	- System Labour Relations Officer, CNR, Montreal
J. A. Sebesta	- Coordinator Transportation, Special Projects, CNR, Montreal
J. J. Milette	- Master Mechanic, CNR, London

J. G. Mavity                - Locomotive Foreman, CNR, London  
D. C. Haycock             - Leading Hand Machinist, CNR, London

And on behalf of the Brotherhood:

P. M. Mandziak           - General Chairman, BLE, St. Thomas  
W. M. Copp               - Local Chairman, Div. 68, BLE, London

#### AWARD OF THE ARBITRATOR

This is an appeal of ten demerit marks assessed Locomotive Engineer T. R. Landick for his alleged responsibility for an incident "in connection with the improper securing of train 667 while employed as locomotive engineer.....resulting in the unattended movement". Mr. Landick is alleged to have failed to have applied the train's "handbrake" upon his arrival at the London Station at 2125 hrs., September 18, 1983. The movement of the train that was attributable to the grievor's alleged negligence occurred approximately six and one-half hours after Mr. Landick booked off work.

Mr. Landick is an experienced long term employee. He stated unequivocally that he had properly applied the handbrake. The employer's evidence attributing responsibility to the grievor for the mishap is based on circumstantial evidence. It relies upon the grievor's statement that he had only pumped the handbrake nine times before leaving it and that the chain attached to the handbrake was too "slack" to have made the handbrake operative, that the grievor was being distracted by a colleague at the time he was involved in making certain the handbrake was fully engaged.

The one independent piece of evidence that appeared to undermine the company's circumstantial case was the delay of six and one-half hours before Train No. 667 moved. In the intervening period the trade union speculated that any number of reasons could have caused the train's movement. For example, it was conceivable that an individual could have entered the engine and tampered with the handbrake. The company also speculated that the air pressure may have exhausted from the air brakes thereby causing the long delay in the trains movement while unprotected by the handbrake.

In sum, what I have had presented before me are several speculative theories as to what caused the train's movement inclusive of the grievor's negligent application of the handbrake. Quite clearly, had the train's movement occurred immediately after the grievor booked off work then the company's case would be much stronger. But because of the lengthy delay between the grievor's attending the train and the train's subsequent movement the grievor's alleged responsibility gradually became more remote. In other words, the probabilities that other intervening causes precipitated the movement became much more proximate.

In sum, I am prepared to give the grievor, owing to his experience as a longstanding employee, the benefit of the doubt. In short I am not satisfied on the evidence adduced that the employer has demonstrated cause for the assessment of discipline. The removal of the ten

demerit marks from the grievor's personal file is therefore directed.

DAVID H. KATES,  
ARBITRATOR.